

Application No.: 10/663,909
Amdt. Dated: April 18, 2005
Reply to Office Action Dated: November 16, 2004

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REMARKS

Claims 2-18, 20-44, and 47-49 are pending in the present application. Claims 2, 3, 10, 15, 16, 17, 20, 22, 29, 37, 47, 48, and 49 have been amended and claims 1, 19, 45, 46, and 50 have been cancelled without prejudice to or disclaimer of the subject matter contained therein.

Claims 17, 18, 29-36, and 49 have been withdrawn. However, because these claims all ultimately depend from generic claims that were indicated to be allowable, Applicants respectfully request that the claims to the non-elected species be rejoined, examined, and allowed.

Reexamination of the application and reconsideration of the rejections and objections are respectfully requested in view of the above amendments and the following remarks.

Allowable subject matter

Claims 3-16, 20-28, 37-44, and 47 were objected to as being dependent upon a rejected base claim but were indicated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 3, 10, 15, 16, 20, 22, 37, and 47 have been rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 4-9, 11-14, 21, 23-28, and 38-44 all depend from one of the rewritten independent claims 3, 10, 15, 16, 20, 22, 37, and 47. Thus, claims 3-16, 20-28, 37-44, and 47 are now believed to be allowable, and Applicants respectfully request that the objection to the claims be withdrawn.

Claim Rejections – 35 U.S.C. §102

Claims 1, 2, 19, 45, 46, 48, and 50 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,193,928 to Balzer et al. Claims 1, 19, 45, 46, and 50 were cancelled without prejudice to or disclaimer of the subject matter contained therein, and the rejection of these claims is therefore now moot. Applicants respectfully traverse the rejection of claims 2 and 48 for the reasons set forth below.

Balzer et al. discloses a device comprising a cylindrical storage container 1. The container comprises a lid 2 sealing the back-sided open end of the container. The cylindrical wall of the container is provided, close to its outlet end, with an external or male screw thread 6, and the device comprises a cap 7 having a corresponding internal or female screw thread. The cap 7 is screwed onto the container 1 and is provided with a fluid application assembly. The fluid application assembly comprises essentially a cutting member 8, a sleeve member 9 adapted to operate the cutting member 8 and an intermediate member 10 supporting a fluid application member 11. The cutting member 8 is constituted as a cylindrical hollow body arranged coaxially

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to the sleeve member 9 and axially movable in the cylindrical bore of the cylindrical hollow protrusion 12 of the cap 7. At the end of the cutting member 8 facing the container 1, it is provided with a sharp free edge 13 which serves to break open the sealing diaphragm 5. *Column 3, line 63-column 4, line 41.*

To anticipate a claim, the reference must teach every element of the claim. MPEP § 2133.

Balzer et al. does not teach every element of claim 2. For example, Balzer et al. does not teach an applicator/dispenser assembly as recited in claim 2 wherein the piercing or breaking member comprises at least two opposing members. As discussed above, Balzer et al. only discloses a device with one cutting member 8 provided with one "sharp free edge 13 which serves to break open the sealing diaphragm 5." Balzer et al. does not disclose an applicator/dispenser assembly comprising at least two opposing members as set forth in claim 2. Thus, because all of the limitations of claim 2 are not taught in Balzer et al., this claim is not anticipated, and Applicants respectfully request that the rejection be withdrawn.

Claim 48 has been amended to be dependent upon claim 47, which was indicated to be allowable. Therefore, Applicants respectfully request that the rejection of claim 48 under 35 U.S.C. §102(b) as being anticipated by Balzer et al. be withdrawn.

Conclusion

For the foregoing reasons, claims 2-16, 20-28, 37-44, 47, and 48 are considered allowable. A Notice to this effect is respectfully requested. Applicants also respectfully request rejoinder and allowance of claims 17, 18, 29-36, and 49. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

Respectfully submitted,

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